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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,527	02/21/2002	David P. Rossum	017002-003890US	9363
8791	7590	03/25/2004	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD, SEVENTH FLOOR LOS ANGELES, CA 90025			WARREN, DAVID S	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/080,527

Applicant(s)

ROSSUM, DAVID P.

Examiner

David S. Warren

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-24 and 36-38 is/are allowed.
- 6) ☒ Claim(s) 25-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 2837

DETAILED ACTION***Allowable Subject Matter***

Claims 14 – 24 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: Regarding claim 14, the prior art (including those patents with a common assignee) does not show a sampling instrument with both linear interpolation and asynchronous memory access operation. Regarding claims 18, 19, and 36, the prior art does not show the use of linear interpolation with the use of bus request and acknowledge signals used within a memory access unit.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25, 27 – 33, and 35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 31 of U.S. Patent No. 5,925,841. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Regarding claims 25 and 33, U.S. Patent No. 5925841 (hereinafter, '841), shows the use of a cache memory storing at least N waveform memory samples for each channel (claim 20, lines 61 and 62), control logic to access the waveform memory samples from the cache memory (claim 4, line 64; the examiner considers "control logic to access ... waveform memory" to be equivalent to "a cache controller to access ... waveform memory"), and an interpolator to perform Nth order interpolation to perform interpolation on the waveform memory samples (claim 18, lines 56 – 58). Regarding claims 27 and 35, the '841 patent discloses both the bus request and bus acknowledge signals (claim 1, lines 35 – 39). Regarding claim 28, the '841 patent discloses a memory address and control signal capable of being output disabled in response too a bus acknowledge signal (claim 2). Regarding claim 29, '841 discloses a shared bus coupling said digital sampling instrument to a waveform memory (claim 17). Regarding claim 30, the '841 document shows the use of overwriting data (see claim 5). Regarding claim 31, see claim 6 of '841. Regarding claim 32, see claim 7 of '841.

Claims 25, 26, 33, and 34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 8 of U.S.

Art Unit: 2837

Patent No. 6,365,816. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Regarding claims 25 and 33, U.S. Patent No. 6,365,816 (hereinafter, '816), shows the use of a cache memory storing at least N waveform memory samples for each channel (claim 6, lines 47 and 48), control logic to access the waveform memory samples from the cache memory (claim 1, lines 9 - 12; the examiner considers "control logic to access ... waveform memory " to be equivalent to "a memory access unit"), and an interpolator to perform Nth order interpolation to perform interpolation on the waveform memory samples (claim 6, lines 41 – 44). Regarding claims 26 and 34, the '816 reference discloses a memory access unit (claim 6, line 51), an address update unit (claim 6, line 49) and asynchronous operation (claim 6, lines 57 and 58).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Nappi can be reached on 571-272-2800 ext 37. The fax phone

Art Unit: 2837

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dsw


ROBERT NAPPI
SUPERVISORY PATENT EXAMINER